an envelope addressed to the general secretary for the return of the ballot.

The relevant provisions are rules 15(a) and 15(d)(i), which are as follows:

15 (a) "Voting shall be by secret ballot *of the whole membership of the Association in* respect of the election of office-bearers."

15 (d) "The Executive Council shall take such steps to see that the following procedures governing secret ballot are complied with:

(i) That each member entitled to vote is issued with a ballot paper together with an envelope addressed to the General Secretary for the return of the ballot."

The defendants admitted that the ballot paper together with the envelope addressed to the general secretary was not sent to each member who was entitled to vote. What took place on the 14th November, 1962, was this. The members were requested to attend at the association's premises and there each member was given a ballot paper and envelope and after marking the ballot paper the member placed it in the envelope and put it in the ballot box.

The intention of rule 15(d)(i) is that each member should be issued with a ballot paper together with an envelope addressed to the general secretary for the return of the ballot. It seems to me that the procedure adopted on the 14th November, 1962, did not give the whole membership of the association an opportunity to vote. There must be many instances where a member was unable to attend at the association's premises for some reason or other which meant that he could not vote. If a ballot paper was sent to him together with the envelope he could have marked the ballot paper, put it in the envelope and posted it or got someone to take it to the secretary and he would thereby have voted. I find that the defendants have contravened the provisions of rule 15(d)(i) and that the failure to observe this rule is *ultra vires* the executive council.

It was submitted by the defendants that the plaintiff could not bring this action as he himself was a party to the *ultra vires* acts of the defendants. In my view the plaintiff certainly was not a party; even if he was a party I do not find that he was knowingly a party.

In the result I make the declarations in term of paragraphs 19(a), 19(b), 19(c) and 19(d) of the statement of claim. I also grant the injunction in terms of paragraph 19(e) of the statement of claim.

The 2nd, 3rd and 4th defendants are to pay the plaintiff's costs to be taxed on the higher scale.

Order accordingly.

Solicitors: *Rodyk & Davidson; T. T. Rajah.*

YEO KUANG CHAI & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) March 20, 1964]

[Singapore — Magistrate's Appeal No. 215 of 1963]

Criminal Procedure—Charge under repealed law—Illegality—Maximum sentence Magistrate can impose—No previous conviction—Excess of jurisdiction—Criminal Procedure Code (Cap. 132), s. 12.

Minor Offences Ordinance (Cap. 117)—Charge under s. 24(1)—Repealed by Modification of Laws (Internal Security and Public Order) (Singapore) Order 1963—Conviction set aside.

The appellants were jointly charged with having committed an offence under section 24(1) of the Minor Offences Ordinance on September 30 1963. Both appellants pleaded guilty and were convicted and sentenced to 18 months imprisonment each. On appeal against sentence,

Held: (1) the Magistrate exceeded his jurisdiction. As both appellants had no previous convictions, the maximum sentence that he could impose under section 12 of the Criminal Procedure Code was 12 months' imprisonment each;

(2) as each appellant had a knife on him a separate charge should have been framed against each of them because each of them committed a separate and distinct offence;

(3) as section 24 of the Minor Offence Ordinance was repealed on September 16, 1963 by the Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963 the charge was clearly illegal and the conviction should be set aside.

MAGISTRATE'S APPEAL.

Appellants in person.

S. R. Chaplchana (Deputy Public Prosecutor) for the respondent.

Choor Singh J.: The abovenamed appellants were charged before a Magistrate's Court on the following charge:—

"You, Yeo Kwang Chai, Tan Joo Phuang are charged that you, on or about the 30th day of September, 1963, at about 12.15 p.m. outside house No. 318, River Valley Road, Singapore, without lawful authority or reasonable excuse, had with you a knife the blade of which is more than 2½ inches long and you have thereby committed an offence punishable under section 24(1) Cap. 117."

Both appellants pleaded guilty, admitted the facts of the case as stated by the prosecuting officer, and were convicted and sentenced to 18 months' imprisonment each. They appealed against the sentence imposed on them by the learned Magistrate on the ground that the sentence was manifestly excessive.

There were three unsatisfactory features in this case. First, the Magistrate clearly exceeded his jurisdiction. As both appellants had no previous convictions, the maximum sentence that the Magistrate could have imposed under section 12 of the Criminal Procedure Code was 12 months' imprisonment.

Secondly, as each of the appellants had a knife on him when they were stopped and searched by the police, each of them committed

a separate and distinct offence, and a separate charge should have been framed against each of them.

Thirdly, and this was the most serious flaw in the proceedings, the two appellants were charged with having committed an offence on 30th September, 1963, against section 24 of the Minor Offences Ordinance (Chapter 117) when in fact that section was no longer in existence. It was repealed on Malaysia Day (16th September, 1963) by the Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963, which applies to the State of Singapore. As the appellants were prosecuted for an offence under a repealed law alleged to have been committed after the repeal of the law, the charge was clearly illegal, and the convictions could not be sustained. I therefore quashed the convictions, set aside the sentences and discharged the appellants. It is still open to the Public Prosecutor to prosecute them, if so desired, under the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, of the Federation of Malaya, which was extended to the State of Singapore by the abovenamed Order with effect from Malaysia Day.

Conviction quashed.

GHAZALI v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) March 21, 1964]
[Ipoh — Criminal Appeal No. 126 of 1963]

Administrative Law—Ministerial directive to Licensing Board—Board imposing condition to licences—Whether condition ultra vires.

Road Traffic—Ministerial directive to Licensing Board to impose condition to licences—Condition that only driver of Malay race may drive—Breach of condition—Road Traffic Ordinance, 1958, ss. 107, 118, 119 & 120(2).

Legislation—Rule-making power—Validity of delegated legislation—Court can canvass.

In exercise of powers conferred under section 107 of the Road Traffic Ordinance, 1958, the Minister of Transport published a general directive in which he stated, *inter alia*, "that in exercise of its powers under sections 118 and 119 a Licensing Board shall attach to any licence issued under Part V to a Malay....in respect of a taxi or hire-car a condition requiring that only a Malay driver shall be employed to drive such vehicle ...." Section 119 provides that subject to Part V of the Ordinance the Licensing Board may attach such condition as it may think fit with respect to matters to which it is required to have regard under section 118. The material provision of section 118, namely subsection (5) states: "Subject to the provisions of subsections (2), (3) and (4) of this section the Licensing Board in exercising its discretion under this section shall give preference to an application from a Malay or a company a preponderant part or if there is no such company suitable a substantial part of whose capital is owned by Malays over any other application".

The appellant was charged with breach of the condition attached to his licence which prohibited his taxi to be driven by a person other than a Malay and was convicted and fined. He appealed on two grounds, one of which was that the Licensing Board in imposing the condition was acting *ultra vires*.

Held: (1) the powers of the Licensing Board to attach conditions to licences being those in section 119 were confined to matters referred to in section 118(5). These powers entitled the Board to give preference to a Malay when issuing a licence. This done, the powers were exhausted. The Board was therefore acting *ultra vires* in imposing a further condition that only a Malay driver could be employed on the vehicle;

(2) the ministerial directive under section 107 did not supply additional powers to the Licensing Board to validate the condition. The authority of the Minister of Transport to give general directives is, by reason of section 107(3), limited to directives on policy to be followed in determining applications and does not extend to matters arising thereafter.

Case referred to:—

(1) *Rossi* v. *Edinburgh Corporation* [1905] A.C. 21, 27.

CRIMINAL APPEAL.

N. H. Chan (*V. Jeyaratnam* with him) for the appellant.

Mohamed bin Yaacob (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong J.: The appellant was charged in the Magistrate's Court at Kampar as follows:

"That you on 7.5.63 at about 2.50 p.m. at 22½ milestone Ipoh/Kampar Road, Kampar, in the State of Perak, being the holder of P.S.V. Permit No. 001965 Ref. A/PSV 3, authorising you to use motor taxi No. H.369 for the carriage of passengers for hire or reward, did commit breach of condition No. 8 of the permit issued in respect of the said taxi by permitting one Beh Ee Soon(m) i/c 3511385 to drive the taxi instead of a person of the Malay race, and that you have thereby committed an offence punishable under sec. 120(2) of the Road Traffic Ordinance, 49/58."

He was convicted and fined the sum of $100, in default imprisonment for 3 months. He appeals against the decision on two grounds, namely, that the Licensing Board in imposing the said condition was acting *ultra vires*, and that in any event the condition is void as being repugnant to article 8 of the Constitution.

The simple facts, as set out in the charge, were not disputed, but only the validity of the condition which was in these terms: "The authorised vehicle shall at all times be driven only by a person of the Malay race."

This particular condition came to be inserted in taxi licences in compliance with a directive of the Minister of Transport published in L.N. 37/61, reproduced here in full:

"ROAD TRAFFIC ORDINANCE, 1958

General Directive Under Section 107 No. 1

In exercise of the powers conferred by section 107 of the Road Traffic Ordinance, 1958, the Minister of Transport hereby directs that in the exercise of its powers under sections 118 and 119 a Licensing Board shall attach to any licence issued under Part V to a Malay or a company a preponderant part of whose capital is owned by Malays in respect of a taxi or hire car a condition requiring that only a Malay driver shall be employed to drive such vehicle, and may attach to such licences issued in respect of other classes of vehicle a